

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

KING DAVID RUSH, JR.

PLAINTIFF

VS.

CAUSE NO. 1:00CV322-D-B

COLUMBUS MUNICIPAL SCHOOL DISTRICT

DEFENDANT

OPINION

Presently, before the court is the Defendant's motion for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure*. Upon due consideration, the court finds the motion is partially well taken and shall be granted in part and denied in part.

A. Factual Background

The Plaintiff, King David Rush Jr. (Rush), is an African-American and a former employee of the Defendant, Columbus Municipal School District (District). Rush left the District to accept a position with another school district in 1994. Subsequently, he applied for positions within the District in 1995 and 1997, but was denied employment. After filing an EEOC complaint, he filed his first lawsuit alleging racial discrimination against the District in 1997. That suit was ultimately dismissed on summary judgment.

During the pendency of Rush's first lawsuit against the District, he applied for the principal positions at Joe Cook Elementary School in 1998, Lee Middle School in 1999, and again at Lee Middle School in 2000. He was denied employment for all three positions. The position with Joe Cook Elementary School was filled by Edna McGill, a white female; the first position with Lee Middle School was filled by Wayne Wigley, a white male; and the second position with Lee Middle School was filled by Lisa Smith, a white female. Rush filed an EEOC complaint on June 8, 1999, alleging race discrimination in the hiring of McGill and another on August 16, 2000, alleging race discrimination and retaliation in the hiring of Wigley and Smith. In addition, Rush filed the current cause based upon the

District's failure to hire him under Title VII, 42 U.S.C. §1981 and 42 U.S.C. §1983. The District has since filed this their motion for summary judgment.

B. Summary Judgment Standard

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the *Federal Rules of Civil Procedure*, the burden then shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

C. Discussion

1. Claims under 42 U.S.C. §1981

The court finds that Rush has no independent cause of action under 42 U.S.C. §1981. In Jett v. Dallas Independent School District, 491 U.S. 701 (1989), the Supreme Court held "that §1981 did not provide a separate cause of action against local government entities." Jett, 491 U.S. at 731. Congress then enacted the Civil Rights Act of 1991, which some federal circuits interpreted to imply a right of action under §1981 against persons acting under the color of law. The Fifth Circuit, however, clearly reaffirmed the holding of Jett in Oden v. Oktibbeha County, Mississippi, 246 F.3d 458 (5th

Cir.2001). The court held that it was not willing to deviate from the Supreme Court's analysis in Jett and that the law in the Fifth Circuit is that an independent cause of action for discrimination under §1981 cannot be maintained against local government entities or persons acting under color of state law. Oden, 246 F.3d at 463-64. The Columbus Municipal School District is a government entity. Accordingly, the court finds that the District is entitled to summary judgment dismissing Rush's 42 U.S.C. §1981 claims.

2. Claim for Punitive Damages

Rush has withdrawn any claim for punitive damages in this case. He admits that he inadvertently pled a claim for punitive damages in the "Prayer" of his complaint. He now waives that claim and concedes the issue. Accordingly, the court finds that the District is entitled to summary judgment dismissing Rush's punitive damages claim.

3. Claims relating to Wayne Wigley's hiring

A Title VII claimant must file charges with the EEOC within 180 days of the alleged illegal conduct. See 42 U.S.C. §2000e-5(e)(1). Wayne Wigley was hired as principal of Lee Middle School on July 29, 1999. Rush did not file an EEOC complaint alleging discrimination or retaliation in his hiring until August 16, 2000, well outside the 180 day time limit. Rush asserts, however, that there is a continuing practice of not hiring African-Americans at specific schools within the District, therefore, he should not be barred by the 180 day time limit. The court does not agree.

The Fifth Circuit has recognized that "equitable considerations may very well require that the filing periods not begin to run until the facts supportive of a Title VII charge or civil rights action are or should be apparent to a reasonably prudent person similarly situated." Glass v. Petro-Tex Chem. Corp., 757 F.2d 1554, 1560 (5th Cir.1985). One such equitable consideration arises in the context of a continuing violation, "[w]here the unlawful employment practice manifests itself over time, rather than as a series of discrete acts." Abrams v. Baylor College of Medicine, 805 F.2d 528, 532 (5th Cir.1986). The court finds, however, that Rush knew that the hiring of a white over him might support a Title VII

claim. In fact, he admits in his deposition that he felt discriminated against when he discovered that Wigley had gotten the principal job. The court also finds that Rush was also aware of his requirement to file an EEOC complaint. He had filed at least two EEOC complaints and one lawsuit prior to Wigley's hiring. Additionally, the court finds that each hiring was a discrete act, not a continuing violation. The hiring of Wigley was more than a year after the McGill hiring and just a few days short of a year before the Smith hiring. Each hiring was a distinct employment decision that gave rise to a separate cause of action if Rush felt that he had been discriminated against. Therefore, the court finds that the District is entitled to summary judgment as a matter of law dismissing any claims relating to the hiring of Wigley over Rush, as he failed to timely exhaust his administrative remedies as to those claims.

4. Claims under Title VII based on discrimination

In a claim of race discrimination brought under Title VII, the evidentiary procedure to be utilized was originally introduced in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under McDonnell Douglas, the plaintiff has the initial burden of proving a prima facie case of discrimination. Id. at 802. If the plaintiff establishes a prima facie case, a presumption of discrimination arises and the burden of production shifts to the employer to provide a legitimate, nondiscriminatory reason for not hiring him. Russell v. McKinney Hosp. Venture, 235 F.3d 219 (5TH Cir.2000). Once the employer articulates its nondiscriminatory reason, the burden is again on the plaintiff to prove that the articulated legitimate reason was a mere pretext for a discriminatory decision. Russell, 235 F.3d at 222. Even if the plaintiff succeeds in revealing the defendants' reasons for not hiring him were false, he still bears the ultimate responsibility of proving the real reason was unlawful "intentional discrimination." See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511-12 (1993). This is not to say that the employee is required to prove that the reason is in fact false, but only that the proffered reason was not the only real motivation behind the employer's decision and that discrimination was at least a substantial motivating factor in that decision.

Rush asserts in his response to the District's motion for summary judgment, that Robert Smith,

a former member of the District's Board of Trustees, informed him that he was not considered for at least one of the positions because he was African-American. Rush contends that "Smith stated that the Board did not want a black principal at Joe Cook Elementary School."

Attached as an exhibit to the District's rebuttal, however, is Robert Smith's affidavit in which he clearly states, under oath, that to his personal knowledge, the recommendation to hire Lisa Smith was in no manner based upon race. He also states that to his knowledge, his vote and the vote of the other four board members, including one more African-American, was not based upon the race of Rush. Further, Smith also states that "to his personal knowledge, the recommendation of Superintendent Owen Bush to hire McGill and her subsequent approval was in no manner based upon any reason other than her qualifications."

The court is of the opinion that since Robert Smith's statement to Rush concerning the appointment of a black principal at Lee Cook Elementary appears to have been made while he was a member of the board, it would most likely be admissible under Rule 801-d-2 of the *Federal Rules of Evidence*; "[a]dmission by a party-opponent." The court also notes Smith's affidavit denying that there were any discriminatory reason for the failure to hire Rush. However, in the interest of caution, the court is of the opinion that a material issue of fact has been raised by the two averments. Accordingly, the Defendant has failed to show that it is entitled to judgment as a matter of law on this issue.

5. Claims under Title VII based on Retaliation and Claims under 42 U.S.C. §1983

The court finds that the Defendant has failed to show that it is entitled to judgment as a matter of law. In any event, the court has the discretion, which it exercises here, to allow the Plaintiff's claims for retaliation under Title VII and 42 U.S.C. §1983 to proceed to trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) ("Neither do we suggest ... that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.").

D. Conclusion

The District is entitled to summary judgment dismissing Rush's claims under 42 U.S.C. §1981, as they cannot be maintained against a local government entity or persons acting under color of state law. The District is entitled to summary judgment dismissing Rush's claim for punitive damages. Rush waived that claim and concedes the issue of punitive damages. The District is entitled to summary judgment dismissing all claims relating to Wayne Wigley's hiring as Rush did not exhaust his administrative remedies by filing an EEOC complaint within 180 days of Wigley's hiring. The District is not entitled to summary judgment dismissing Rush's claims under Title VII based on retaliation and discrimination and Rush's claims under 42 U.S.C. §1983. Those claims will be allowed to proceed to trial.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of October, 2001.

Chief Judge

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DEFENDANT

ORDER GRANTING IN PART AND
DENYING IN PART THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to an opinion issued this day, it is hereby ORDERED that

- a. the Defendants' motion for summary judgment (docket entry # 19) is GRANTED IN PART AND DENIED IN PART;
- b. the Plaintiff's claims under 42 U.S.C. §1981 are DISMISSED WITH PREJUDICE;
- c. the Plaintiff's claim for punitive damages is conceded and DISMISSED WITH PREJUDICE;
- d. the Plaintiff's claims arising from the hiring of Wayne Wigley are DISMISSED WITH PREJUDICE; and
- e. the Plaintiff's claims under Title VII for discrimination and retaliation and Plaintiff's claims under 42 U.S.C. §1983 shall be allowed to proceed to trial.

SO ORDERED, this the _____ day of October, 2001.

Chief Judge